

Remedial amendment period; plans of employers exempt from filing income tax returns. Rules are provided with respect to the application of section 401(b) of the Code, which provides for a period during which an employee plan may be amended retroactively to satisfy the requirements of section 401(a), to plans maintained by employers who are exempt from filing income tax returns.

SECTION 1. PURPOSE

This Revenue Ruling provides rules with respect to the application of section 401(b) of the Internal Revenue Code of 1954, as amended by the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 1974-3 C.B. 1, in cases where certain employee plans are maintained by employers who are exempt from filing federal income tax returns.

SEC. 2. BACKGROUND AND GENERAL INFORMATION

Section 401(b) of the Code provides for a period during which an employee plan may be amended retroactively in order to meet the requirements of section 401(a). This 'remedial amendment period' ends with the time prescribed by law, including extensions, for filing the return of the employer for the taxable year in which a plan or amendment was adopted, or such later time as the Secretary may designate.

Section 6033 of the Code provides, generally, that, with certain enumerated exceptions, every organization exempt from taxation under section 501(a) shall file an annual return stating such information as the Secretary may by forms or regulations prescribe.

Section 6058 of the Code provides, in general, that every employer who maintains a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation, or the plan administrator, shall file an annual return concerning the plan's qualification, financial condition and operation.

Section 1.401(b)-1(c)(2) of the Income Tax Regulations provides that, unless otherwise extended, the remedial amendment period for a plan maintained by one employer ends with the latest of (1) the time prescribed by law, including extensions, for filing the income tax return (or partnership return of income) of the employer for the employer's taxable year, (2) the last day of the plan year, or (3) December 31, 1976.

SEC. 3. RULES

.01 Employers required to file certain information returns-

For employers who are required to file annual information returns under section 6033 of the Code, the terms 'return' and 'income tax return' used in section 401(b) and section 1.401(b)-1(c)(2) of the regulations shall, subject to .03, be construed to mean the annual information return of the employer (generally Form 990, Return of Organization Exempt from Income Tax).

.02 Employers not required to file information returns-
For employers who are not required to file information returns under section 6033 of the Code, the terms 'return' and 'income tax return' used in section 401(b)-1(c)(2) of the regulations shall, subject to .03, be construed to mean the annual return/report (Form 5500) filed pursuant to section 6058.

.03 Special rule for certain trusts-

Notwithstanding the foregoing rules, for an employer that is a tax-exempt trust forming part of a single qualified plan under section 401(a) of the Code that maintains a different employee plan intended to qualify under section 401(a) for its own employees, the end of the remedial amendment period shall be determined by reference to the due date of the annual return/report (Form 5500) required to be filed for the trust pursuant to section 6058, not the return/report (Form 5500) required to be filed by the employer-trust for its own plan.

SEC. 4. EXAMPLES

Example 1.-An employer maintains an employee plan intended to qualify under section 401(a) of the Code and, therefore, files, pursuant to section 6058, an annual return/report (Form 5500) which is due on the last day of the 7th month following the close of the plan year. No other employer contributes to the plan. As an organization exempt from federal income tax under section 501(a), the employer files, pursuant to section 6033, an annual information return (Form 990) which, for this employer, is due on the 15th day of the 5th month following the close of its taxable year. The employer's taxable year and the plan year are coterminous. In addition, the employer has unrelated business taxable income subject to section 511 and, therefore, files an income tax return (Form 990-T) which for this employer is due on the 15th day of the 3rd month following the close of its taxable year. The end of the remedial amendment period is determined by taking into account the due date (including extensions) of the annual information return (Form 990) filed under section 6033 of the Code.

Example 2.-An employer maintains an employee plan that is a governmental plan as defined in section 414(d) of the Code and that is intended to qualify under section 401(a). The employer is required to file no returns other than a return/report (Form

5500) pursuant to section 6058. The end of the remedial amendment period for the plan is determined by taking into account the due date (including extensions) of the return/report (Form 5500) filed for the plan pursuant to section 6058 of the Code.

Example 3.-An employer maintains an employee plan 'X', qualified under section 401(a) of the Code and funded by a trust which is tax-exempt under section 501(a). No other employer contributes to the plan. An annual return/report (Form 5500) is filed for plan X and its related trust pursuant to section 6058.

The trust for plan X maintains, for its own employees, an employee plan, 'Y', and, therefore, the trust for plan X files an annual return/report (Form 5500) for plan Y. (Although tax-exempt under section 501(a), the trust need not file a return pursuant to section 6033). Plan X uses a plan year ending on March 31; plan Y uses a year ending April 30.

The end of the remedial amendment period for the employee plan (Y) maintained by the trust for its own employees is determined by taking into account the due date (including extensions) of the return/report (Form 5500) filed under section 6058 of the Code for the plan X trust, i.e. October 31 (the last day of the 7th month following the close of the plan year on March 31) or a later date if an extension is obtained.